

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

METAMORA TELEPHONE COMPANY)	
)	Docket No. 04-0366
Petition for Suspension or Modification of)	
Section 251(b)(2) requirements of the Federal)	
Telecommunications Act pursuant to Section)	
251(f)(2) of said Act; for entry of Interim Order;)	
and for other necessary relief.)	

**RESPONSE OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION
TO VERIZON WIRELESS' MOTION TO STRIKE**

NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its attorneys, and files Staff's response to Verizon Wireless' Motion to Strike certain portions of Metamora Telephone Company's (the "Petitioner") Brief on Exceptions. For the reasons stated below, Staff files in support of Verizon Wireless' motion and requests that the Administrative Law Judge grant the motion in its entirety.

1. On September 10, 2004, Petitioner filed its Brief on Exceptions pursuant to the directions set forth in the Administrative Law Judge's Proposed Order in this proceeding. See Petitioner Brief on Exceptions.

2. Among other things, in its Brief on Exceptions, Petitioner launched a collateral attack against the Commission's August 25, 2004 orders in the 33 other LNP cases, which granted petitioners suspensions until January 1, 2006. Id. at 3-5, ¶6.¹ Petitioner asserted that the Commission's "use of the January 1, 2006 date [in those 33 cases] was a mistake." Id. at 4.

¹ Staff notes that Verizon Wireless also engaged in a collateral attack of the Commission's August 25, 2004 orders in its Brief on Exceptions. See Verizon Wireless Brief on Exceptions, at 1-2 (filed Sept. 10, 2004). As a result, to the extent the Administrative Law Judge is inclined to grant Verizon Wireless' motion, Staff recommends that the Administrative Law Judge also strike those relevant portions of Verizon Wireless' Brief on Exceptions *sua sponte* for the same reasons contained herein.

Petitioner further attacked those orders by asserting that “the Commission should reopen the other 33 WLNP cases...on its own motion or simply enter Amendatory Orders therein making the WLNP suspensions for all small companies in Illinois end on” November 24, 2006, so there is “uniform policy.” Id. Petitioner submitted replacement language for the ALJ’s Proposed Order at paragraph 7 of its Brief in an attempt to perfect its collateral attack on the Commission’s August 25, 2004 orders. Id. at 4-5, ¶7.

3. On September 17, 2004, Staff filed its Reply Brief on Exceptions to both Petitioner and Verizon Wireless’ Brief on Exceptions. See Staff Reply Brief on Exceptions.

4. In its Brief on Exceptions, Staff replied to Petitioner’s collateral attack on the Commission’s August 25, 2004 orders. Staff Brief, at 5. In reply, Staff stated that Illinois courts and past Commission orders have long explained that the proper means by which a person should correct perceived errors in Commission orders is through the rehearing and appeal processes. Id. Staff explained that since Petitioner was not a party to any of the 33 LNP cases where the Commission entered its orders, Petitioner had absolutely no standing to seek corrections to those orders, let alone attempt to do so in this proceeding. Id. Staff concluded that Petitioner’s collateral attack was improper and nothing more than an attempt to “vitate the protection the Courts found to be necessary to bring assurance of stability and finality in Commission Orders.” Id. quoting *Citizens for a Better Environment v. Illinois Wood Energy Partners, L.P., Complaint as to Respondent’s current status as a qualified solid waste energy facility as defined under the Illinois Public Utilities Act*, Docket No. 94-0363, 1995 Ill. PUC LEXIS 247, at *15-*16 (Order entered Apr. 12, 1995).

5. Staff stands by the arguments in Paragraph 4 and specifically incorporates them here for purposes of Staff’s Response to Verizon Wireless’ Motion to Strike.

6. On September 17, 2004, Verizon Wireless' filed its motion to strike contemporaneous with its filing of its Reply Brief on Exceptions. See Verizon Wireless Motion to Strike. Verizon Wireless seeks to strike paragraph 6 and part of paragraph 7 of Petitioner's Brief on Exceptions for two reasons. Id. at 4-7. First, Verizon Wireless contends that both paragraphs improperly assert facts that are not in the record. Id. Second, Verizon Wireless claims that both paragraphs engage in a collateral attack of the Commission's August 25, 2004 orders. Id. at 7.

7. Staff fully concurs with Verizon Wireless' motion to strike and continues to believe that Petitioner's collateral attack upon the Commission's August 25, 2004 orders is without standing and improper.

8. In further support of Verizon Wireless, Staff draws the Administrative Law Judge's attention to the Commission's decision in *MCI Telecommunications Corporation: Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Docket No. 96-AB-006, 1996 Ill. PUC LEXIS 706, at *88-*91 (Order entered Dec. 17, 1996) ("*MCI Arbitration Order*"). In that proceeding, MCI collaterally attacked a prior Commission order that had been entered two months before MCI filed its petition for arbitration in certain portions of its pre-filed testimony.² Ameritech filed a motion to strike those relevant portions as an impermissible collateral attack, and the Administrative Law Judge granted Ameritech's motion. Id. at *88. The Commission affirmed the ALJ's decision to grant Ameritech's motion and stated, "[t]o the extent that MCI may be dissatisfied with [the Commission's prior] decision in [Docket Nos. 95-

² See id. at *88 (referencing the Commission's order in Docket Nos. 95-0458 and 95-0531, which was entered on June 26, 1996. *AT&T Communications of Illinois, Inc.: Petition for a total local exchange wholesale service tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central Telephone Company pursuant to Section 13-505.5 of the Illinois Public Utilities Act, et al.*, Docket Nos. 95-0458 and 95-0531 (cons.), 1996 Ill. PUC LEXIS 320 (Order entered Jun. 26, 1996). MCI filed its petition for arbitration on August 30, 1996. Id. at *2.

0458 and 95-0531], the appropriate approach would have been to file an application for rehearing and an appeal upon denial of that application.” Id. at *91. For similar reasons, it is Staff’s position that the Administrative Law Judge should also strike those relevant portions of Petitioner’s Brief on Exceptions and should grant Verizon Wireless’ motion.

WHEREFORE, Staff respectfully requests that the Administrative Law Judge grant Verizon Wireless’ motion and the relief sought therein.

Respectfully submitted,

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